

THURSDAY, AUGUST 22, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:05 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

**BUSINESS TAXES APPEALS HEARINGS****Interstate Battery San Diego, Inc., 76962**

7-1-96 to 6-30-99, \$7,868.16 Tax

For Claimant: Patrick J. Leone, CPA

For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether claimant received and relied upon written misinformation based on the prior audit.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be granted as to the disputed measure of tax.

**Bal Harbor Liquor, Inc., 89002417300**

1-1-94 to 12-31-96, \$27,273.01 Tax

\$00.00 Penalty, Negligence

For Petitioner: Thor Eakes, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence establishes that the audited understatement of taxable sales is excessive.

Whether the evidence establishes that petitioner filed a timely petition for redetermination for the period November 20, 1992 through December 31, 1993.

Action: (Motion expunged.)

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the previous motion to redetermine the petition with adjustments be expunged.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments.

**Robert J. Koepple, 92509**

10-1-96 to 12-31-96, \$4,125.00 Tax

\$412.50 Penalty, Failure to File

For Petitioner: Melvin E. Shiaman, CPA

Robert J. Koepple

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

THURSDAY, AUGUST 22, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether petitioner, as a broker, collected sales tax reimbursement on the sale of the vessel, and thus, was responsible for remitting that amount to the state.

Whether petitioner has shown that his failure to make a timely return is due to reasonable cause and circumstances beyond his control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**United Syatt America Corp., 128577**

10-1-97 to 6-30-00, \$31,108.00 Tax

For Petitioner: Ronald E. Hanson, President

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the 1.09 percent error rate is material, and whether the results of the block sample of randomly selected days are representative of the total population of claimed sales for resale, so as to warrant the \$402,694.00 projection of disallowed sales for resale.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined applying tax to the specifically identified errors only.

**PETITIONS FOR RELEASE OF SEIZED PROPERTY**

**Atef Hanna Abdou, 173438**

5-13-02 Notice of Seizure and Forfeiture

For Petitioner: Atef Abdou

For Sales and Use Tax Department: Blanca Breeze, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the Board staff properly seized the cigarettes.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

**Ghassan Aboied and Marwan Aboied, 174728**

4-11-02 Notice of Seizure and Forfeiture

For Petitioner: Ghassan Aboied

Linda Davilla, Representative

For Sales and Use Tax Department: Blanca Breeze, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

THURSDAY, AUGUST 22, 2002

Issue: Whether the Board staff properly seized the cigarettes.  
Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board determined the staff properly seized the cigarettes.

**TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM HEARING**

Italspain Corporation, 133449

07-23-01, \$7,851.00 Tax

For Claimant: Dean I. Friedman, Attorney

For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the Department's position on claimant's Petition for Redetermination was reasonable.

Action: Mr. Klehs moved to redetermine the petition as recommended by the Appeals Section. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 10:20 a.m. and reconvened at 10:25 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

**BUSINESS TAXES APPEALS HEARING**

Navigator Press, Inc., 132612

7-1-00 to 3-31-01, \$1.00 Tax

For Claimant: Waived Appearance

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether claimant is entitled to a refund of additional tax-paid purchases resold credit for its sales of special printing aids to product manufacturers.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

THURSDAY, AUGUST 22, 2002

**FINAL ACTION ON PETITION HEARD AUGUST 22, 2002**

Mr. Klehs moved to redetermine the petition of *Robert J. Koepple, 92509*, as recommended by the Appeals Section. The motion was seconded by Mr. Andal. Mr. Parrish made a substitute motion to delete the negligent penalty, otherwise redetermine as recommended by the Appeals Section. The motion failed for lack of a second.

Upon the motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**BUSINESS TAXES APPEALS HEARING**

Madison/Graham Color Graphics, Inc., 56910

10-1-96 to 3-31-00, \$1.00 tax

For Claimant: Waived Appearance

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether claimant is entitled to a refund of additional tax-paid purchases resold credit for sales of special printing aids to product manufacturers.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HEARD AUGUST 22, 2002**

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board determined that in the petition of *Atef Hanna Abdou, 173438*, the staff properly seized the cigarettes and tobacco products.

**FINAL ACTION ON REIMBURSEMENT CLAIM HEARD AUGUST 22, 2002**

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the claim of *ItalSpain Corporation, 133449*, be denied.

The Board adjourned at 10:35 a.m.

*The foregoing minutes are adopted by the Board on November 13, 2002.*